sion, taking as purchasers from the testatrix. *Kemp* v. *Reinhard et al.* (1910), — Pa. —, 77 Atl. 436.

The case of *Guthrie's Appeal,* 37 Pa. 9, is the only case cited by the court in support of its holding. There the words of the will were "I give and bequeath to my daughter * * * the use and life estate in her own proper person (but without power to convey the same to any other person for any period of term) * * * and at the decease of my said daughter Elizabeth, the said lot or tract of land and appurtenances I hereby bequeath to such of her children or their heirs as may survive her etc." The court there held the word children a word of purchase, and proceeded to discuss other such words. They say: "The word "issue" is of doubtful meaning, though usually a word of limitation in a will but requiring only a clear explanation to justify a departure from the ordinary meaning, imposing on those who would translate the term the onus of producing an express warrant under the hand of the author of the gift." In *McKee* v. *McKinley,* 9 Casey (Pa.) 92, it was said that "If the remainder is to persons standing in the relation of heirs, general or special, of the tenant for life, the law presumes them to take as heirs, unless it unequivocally appears that individuals, other than persons who are to take simply as heirs are intended." STRONG, J. in the *Guthrie* case (supra) says such a presumption is made only when technical words of limitation are applied to the remaindermen, when the gift is to "heirs" or "issue." The presumption would according to this case arise in the principal case. The court must therefore have found in the words of the will an unequivocal intent that the issue of the devisee were to become the root of a new succession and were not intended by the testator to take as heirs. This seems to be an example of the extremities to which courts professing to be governed by the Rule in *Shelley's* case will go in order to avoid applying the rule. A few of the cases construing the word "issue" are *McIlhinney* v. *McIlhinney* (1893), 137 Ind. 411; *Gonzales* v. *Barton* (1873), 45 Ind. 295; *King* v. *Melling* (1673), 2 Lev. 58; Denn, ex Dem. *Webb* v. *Puckey* (1793), 5 T. R. 299; *Frank* v. *Storin* (1803), 3 East 548.

WILLS—PROBATE—UNDUE INFLUENCE—BURDEN OF PROOF.—A will left almost the entire estate of testatrix to her brother, his wife and daughters, with a bequest of ten dollars to an only son for whom testatrix had often expressed an intention of providing. The brother had been the business advisor of testatrix, she had lived in his home and he and his family had not for some time prior to her death permitted her to be alone with her son. It was shown that the will, which made the brother executor, was procured by him and drawn under his direction; that testatrix was ill and feeble at the time the will was witnessed and did not speak of the will in the presence of the witnesses. Nor was it shown in proof that the will was ever explained to her—she could neither read nor write—or that she fully understood its contents. *Held,* when a will is executed through the intervention of one occupying a confidential relation toward testatrix whereby such person is the executor and a large beneficiary, the law casts upon him the burden of removing the suspicion thereby created that the will was not the free

and voluntary act of the testatrix. *In re Everett's Will* (1910), — N. C. —, 68 S. E. 924.

The court cites as authority for the holding *Watterson* v. *Watterson,* 1 Head (Tenn.) 1, *Maxwell* v. *Hill,* 89 Tenn. 584, *Coghill* v. *Kennedy,* 119 Ala. 641. Within two months of the above decision, a similar case arose in an adjoining state—testator left his entire estate to his attorney; the will was drawn by the donee's law partner, in their offices, witnessed by their clerks and stenographer, signed by a mark, with no explanation why this was done though testator could write and the donee was made executor. The date of the will bore signs of having been changed and the will revoked another made a few days previous. None of the witnesses could fix the date of its execution. *Held,* upon proof of formal execution of a will, a prima facie case is made out; and with some exceptions, the general rule is that the burden of proof is then on the contestants to prove undue influence, and remains upon them to the end. *Mordecai* v. *Canty* (1910), — S. C. —, 68 S. E. 1049.

The court cites *Black* v. *Ellis,* 3 Hill L. 73; *Scarborough* v. *Baskin,* 65 S. C. 568; *Thames* v. *Rouse,* 82 S. C. 40. Mr. Schouler, in SCHOULER, WILLS, Ed. 2, § 240, states the principle on which these cases may be reconciled: "Indeed, there appears at times a conflict in the cases, concerning this burden of proof, so that evidence which in one instance may be thought plainly inadequate for shifting the burden upon the propounder of the will, puts him in another to repelling the unfavorable imputation which mere circumstances afford. This discrepancy is best met, first by conceding freely that all maxims for balancing the proof of fraud, force or undue influence, must be sensitive and variable; and next, by pointing out that the burden of impeaching a will on such grounds rests far more positively upon a contestant where the fraud, force or undue influence in question is made a distinct issue, there being no doubt that the testator was rational, intelligent and capable, than in those cases, far more common, where issues of insanity or incapacity are closely blended with these darker ones, and the proof tends to setting the will aside on either ground." HOAR, J., in *Baldwin* v. *Parker,* 99 Mass. 79, accurately expresses the same principle. In *Thames* v. *Rouse,* supra, the court was evenly divided as to which party should bear the burden of proof. In the *Everett* case the proof was such as to raise a doubt in the mind of the court as to the capacity of the testatrix to make a will; but in *Mordecai* v. *Canty,* the question was not raised. The general rule is contrary to the holding of the North Carolina court even though a question of capacity is raised with one of undue influence. *Greenwood* v. *Kline,* 7 Or. 17; *Estate of Matz,* 136 Cal. 558; *Gustafson* v. *Eger,* 126 Mich. 454; *Cash* v. *Lush,* 142 Mo. 630; *Cutter* v. *Cutter et al.,* 103 Wis. 258.